

1                                   **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2   In the Matter of the Escrow Agent License of:

No. 07F-BD072-SBD

3   **NETCO TITLE, INC. (FN)**

**CONSENT ORDER**

4   4625 South Wendler Drive, Suite 220  
Tempe, AZ 85282

5                                   Petitioner.

6           On May 2, 2007, the Arizona Department of Financial Institutions (the "Department") issued  
7   a Notice of Hearing alleging that Petitioner had violated Arizona law. On June 13, 2007, the  
8   Department issued an Amended Notice of Hearing. Wishing to resolve this matter in lieu of an  
9   administrative hearing, Petitioner does not contest the following Findings of Fact and Conclusions of  
10   Law, and consents to the entry of the following Order.

11                                   **FINDINGS OF FACT**

12           1.     Petitioner Netco Title, Inc. (FN), ("Netco") is an Illinois corporation authorized to  
13   transact business in Arizona as an escrow agent, license number EA 0904208, within the meaning of  
14   A.R.S. §§ 6-801 *et seq.* The nature of Netco's business is that of an escrow agent within the  
15   meaning of A.R.S. § 6-801(5).

16           2.     On October 16, 2006, the Department conducted an examination of Netco's business  
17   affairs. Based upon that examination, a report was prepared ("Report of Examination") which  
18   revealed Netco has:

19                   a.     Transacted business using a name other than that under which it is licensed to  
20   do business in Arizona, specifically:

21                           i.     Failed to label two (2) escrow bank accounts with its proper name; and  
22                           ii.    Failed to use its proper name in settlement statements and other  
23   escrow documents;

24                   b.     Failed to fully comply with the annual audit requirement, specifically:

25                           i.     Failed to include JP Morgan Chase Bank escrow clearing account  
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1 #xxxxxxx2440 in the Independent Auditor's Report on the Supplementary  
2 Information; and

3 ii. Filed an annual report which reflects the combined financial position  
4 of the licensee and companies affiliated through common ownership;

5 c. Failed to make and file a "true and correct report" of the business of the agent  
6 in the office of the Superintendent, specifically:

7 i. Filed a semi-annual financial report which reflects the combined  
8 financial position of the licensee and companies affiliated through common  
9 ownership; and

10 ii. Submitted a revised semi-annual financial report which was not in  
11 accordance with generally accepted accounting principles;

12 d. Failed to properly reconcile the JP Morgan Chase Bank account used as a  
13 general escrow clearing account;

14 e. Failed to provide adequate follow-up on stale-dated outstanding checks;

15 f. Failed to provide adequate follow-up on escrow balances aged in excess of  
16 180 days;

17 g. Failed to maintain an adequate escrow trial balance report;

18 h. Failed to provide the Notice of Right to Earn Interest disclosure to ten (10)  
19 depositing escrow parties within three (3) days after receipt of escrow monies;

20 i. Failed to maintain internal control procedures to ensure that persons employed  
21 by or associated with Petitioner's business do not make significant errors or perpetuate  
22 significant irregularities or fraud without timely detection, specifically:

23 i. Petitioner's software system permits the backdating of voided checks;

24 and

25 ii. Petitioner's software system does not provide controls that prevent  
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1 someone from erasing, deleting, changing or altering transaction history after the data  
2 has been entered into the database;

3 j. Commingled the licensee's trust monies with affiliated companies' monies  
4 held in an escrow bank account used as a general clearing account to receive incoming  
5 escrow wires for Petitioner and its affiliated companies;

6 k. Failed to disclose to the buyers and sellers of residential dwellings that the  
7 title insurance underwriter may offer a closing protection letter that provides protection for  
8 the loss of escrow monies due to fraud or dishonesty of the agent;

9 l. Failed to maintain adequate documentation to evidence that the required  
10 "notice of uninsured monies" was provided to parties to ten (10) escrow transactions within  
11 three (3) business days after receipt of funds;

12 m. Disbursed funds from five (5) escrow accounts prior to the deposit of the  
13 funds at the bank;

14 n. Provided an internal escrow rate fee schedule which conflicts with its filed  
15 and approved rates, specifically:

16 i. Petitioner's filed and approved rates provide for escrow fees to be  
17 charged "per transaction," but the internal company fee schedule indicates escrow  
18 fees are to be charged "per side;"

19 ii. Petitioner's filed and approved rates require a \$125.00 charge for any  
20 escrow closed after 5:30 p.m., but the internal company fee schedule indicates  
21 Petitioner charges \$75.00 per side regardless of the time;

22 iii. Petitioner's filed and approved rates do not differentiate between  
23 Purchase, Refinance and Equity loan transactions, but the internal company fee  
24 schedule indicates Petitioner charges a \$125.00 premium for Purchase transactions;  
25 and  
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- 1                   iv.     Petitioner has established a tiered pricing schedule for national clients,  
2                   but tiered rates have not been filed and approved by the Superintendent;
- 3                   o.     Failed to charge fifteen (15) escrow parties the exact third-party pass-through  
4                   costs, specifically:
- 5                   i.     Petitioner overcharged six (6) escrow parties by an amount totaling  
6                   \$89.10; and
- 7                   ii.    Petitioner's total deviations (overcharges plus undercharges) amounted  
8                   to \$126.10;
- 9                   p.     Deviated from its filed and approved rates for nineteen (19) escrow parties,  
10                  specifically:
- 11                  i.     Petitioner overcharged fifteen (15) escrow parties by an amount  
12                  totaling \$1,500.00; and
- 13                  ii.    Petitioner's total deviations (overcharges plus undercharges) amounted  
14                  to \$1,675.00;
- 15                  q.     Failed to maintain adequate escrow account balances and records, specifically:
- 16                   i.     Failed to maintain escrow fee calculation worksheets in sufficient  
17                   detail;
- 18                   ii.    Failed to provide the detail of the various recording fees charged on  
19                   each escrow closing statement; and
- 20                   iii.   Failed to maintain supporting documentation for each receipt and  
21                   disbursement made through the escrow.
- 22                  3.     On June 6, 2007, Petitioner submitted to the Department its annual audit for the year  
23                  ended December 31, 2006. Petitioner's audit report reflected a negative stockholders' equity and  
24                  year-to-date loss. Petitioner is currently in the process of forming a new corporation which would be  
25                  capitalized by one hundred thousand dollars (\$100,000.00), effectively resolving the issue of  
26

1 potential insolvency.

## 2 CONCLUSIONS OF LAW

3 1. Pursuant to Title 6, Chapter 7 of the Arizona Revised Statutes, the Superintendent is  
4 charged with the duty to regulate all persons engaged in the escrow agent business and with the  
5 enforcement of statutes, rules and regulations relating to escrow agents.

6 2. By the conduct set forth in the Findings of Fact above, Petitioner has violated statutes  
7 and rules governing escrow agents as follows:

8 a. A.R.S. § 6-813(A) by transacting business using a name other than that under  
9 which it is licensed to do business in Arizona;

10 b. A.R.S. § 6-832(A) by failing to fully comply with the annual audit  
11 requirement;

12 c. A.R.S. § 6-832(B) by failing to make and file a “true and correct report” of the  
13 business of the agent in the office of the Superintendent;

14 d. A.R.S. §§ 6-834(A) and 6-841 by failing to properly reconcile the JP Morgan  
15 Chase Bank account used as a general escrow clearing account;

16 e. A.R.S. §§ 6-834(A) and 6-841 by failing to provide adequate follow-up on  
17 stale-dated outstanding checks;

18 f. A.R.S. §§ 6-834(A) and 6-841 by failing to provide adequate follow-up on  
19 escrow balances aged in excess of 180 days;

20 g. A.A.C. R20-4-704 by failing to maintain an adequate escrow trial balance  
21 report;

22 h. A.R.S. § 6-834(D) and A.A.C. R20-4-702 by failing to provide the Notice of  
23 Right to Earn Interest disclosure to ten (10) depositing escrow parties within three (3) days  
24 after receipt of escrow monies;

25 i. A.R.S. § 6-841 by failing to maintain internal control procedures to ensure  
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1 that persons employed by or associated with Petitioners' business do not make significant  
2 errors or perpetuate significant irregularities or fraud without timely detection;

3 j. A.R.S. § 6-841.01(A) by commingling the licensee's trust monies with  
4 affiliate companies' monies held in an escrow bank account used as a general clearing  
5 account by Petitioner and other affiliated companies;

6 k. A.R.S. § 6-841.02(A) by failing to disclose to the buyers and sellers of  
7 residential dwellings that the title insurance underwriter may offer a closing protection letter  
8 that provides protection for the loss of escrow monies due to fraud or dishonesty of the agent;

9 l. A.R.S. § 6-841.03 and A.A.C. R20-4-702 by failing to maintain adequate  
10 documentation to evidence that the required "notice of uninsured monies" was provided to  
11 parties to ten (10) escrow transactions within three (3) business days after receipt of funds;

12 m. A.R.S. § 6-843 by disbursing funds from five (5) escrow accounts prior to the  
13 deposit of the funds at the bank;

14 n. A.R.S. § 6-846.01(A) by providing an internal escrow rate fee schedule which  
15 conflicts with its filed and approved rates;

16 o. A.R.S. § 6-846.01(A) by failing to charge fifteen (15) escrow parties the exact  
17 third-party pass-through costs;

18 p. A.R.S. § 6-846.04(A) by deviating from its filed and approved rates for  
19 nineteen (19) escrow parties; and

20 q. A.R.S. § 6-831 and A.A.C. R20-4-702 by failing to maintain adequate escrow  
21 account balances and records.

22 3. The violations set forth above constitute grounds for: (1) the issuance of an order  
23 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to  
24 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
25 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
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1 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the  
2 suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-817; and (4) an order or any  
3 other remedy necessary or proper for the enforcement of statutes and rules regulating escrow agents  
4 pursuant to A.R.S. §§ 6-123 and 6-131.

5 4. By failing to remain in such financial condition that Petitioner cannot continue in  
6 business with safety to customers or the public and failing to maintain the financial resources to  
7 adequately serve the public, Petitioner is in violation of A.R.S. § 6-817(A)(3) and (10) and A.A.C.  
8 R20-4-708, which constitutes grounds for revocation of Petitioner's escrow agent license.

9 5. Pursuant to A.R.S. § 6-132, Petitioner's violations of the aforementioned statutes are  
10 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation per  
11 day.

#### 12 ORDER

13 1. Petitioner shall immediately stop the violations set forth in the Findings of Fact and  
14 Conclusions of Law.

15 2. Petitioner shall immediately pay to the Department a civil money penalty in the  
16 amount of **ten thousand dollars (\$10,000.00)**.

17 3. Petitioner shall submit monthly unaudited financial statements to the Department,  
18 including a balance sheet and income statement, by the twentieth day of each month following the  
19 previous month's end. The Department will reassess the need for monthly financials once the new  
20 company's year end audit report for the calendar year 2007 is received.

21 3. Petitioner shall surrender its escrow agent license to the Superintendent, EA 0904208,  
22 and shall be granted a new license for Netco, Inc.

23 4. Petitioner shall not accept any further escrow agent business. All new escrow agent  
24 business shall be accepted by Netco, Inc.

25 5. Petitioner shall within fifteen (15) days wind down and close all escrow files, or in  
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1 the alternative, transfer all remaining escrow files to Netco, Inc. and hand deliver its escrow agent  
2 license to the Superintendent. Upon receipt of the license of Netco Title, Inc. (FN), the  
3 Superintendent shall issue the license to Netco, Inc. Petitioner shall not disburse any escrow  
4 transactions after August 7, 2007. Petitioner may continue to pay on checks issued by Petitioner on  
5 escrow transactions funded before August 8, 2007 for a period of one hundred eighty (180) days  
6 after August 7, 2007. When the checks become stale-dated, Petitioner must transfer all outstanding  
7 funds to Netco, Inc.

8 6. The provisions of this Order shall be binding upon Petitioner, and resolves the Notice  
9 of Hearing and Amended Notice of Hearing, subject to successful exchange of Petitioner's license  
10 for that of Netco, Inc., and subject to compliance with the requirements of this Order. Should  
11 Petitioner fail to comply with this Order, the Superintendent may institute further disciplinary  
12 proceedings.

13 7. The provisions of this Order shall be binding upon Petitioner, its employees, agents  
14 and other persons participating in the conduct of the affairs of Netco Title, Inc. (FN).

15 8. This Order shall become effective upon service, and shall remain effective and  
16 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated  
17 or set aside.

18 SO ORDERED this 14th day of September, 2007.

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21 Felecia A. Rotellini  
22 Superintendent of Financial Institutions

23 **CONSENT TO ENTRY OF ORDER**

24 1. Petitioner acknowledges that it has been served with a copy of the foregoing Findings  
25 of Fact, Conclusions of Law, and Order in the above-referenced matter, has read the same, is aware  
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1 of its right to an administrative hearing in this matter, and has waived the same.

2 2. Petitioner admits the jurisdiction of the Superintendent and consents to the entry of  
3 the foregoing Findings of Fact, Conclusions of Law, and Order.

4 3. Petitioner states that no promise of any kind or nature has been made to induce it to  
5 consent to the entry of this Order, and that it have done so voluntarily.

6 4. Petitioner agrees to cease from engaging in the violative conduct set forth above in  
7 the Findings of Fact and Conclusions of Law.

8 5. Petitioner acknowledges that the acceptance of this Agreement by the Superintendent  
9 is solely to settle this matter and does not preclude this Department, any other agency or officer of  
10 this state or subdivision thereof from instituting other proceedings as may be appropriate now or in  
11 the future.

12 6. John Baumgart, on behalf of Netco Title, Inc. (FN) and himself, represents that he is  
13 the Chief Executive Officer, and that, as such, has been authorized by Netco Title, Inc. (FN) to  
14 consent to the entry of this Order on its behalf.

15 7. Petitioner waives all rights to seek judicial review or otherwise to challenge or contest  
16 the validity of this Cease and Desist Order.

17  
18 DATED this 7<sup>th</sup> day of August, 2007.

19 By: \_\_\_\_\_

20 John Baumgart, Chief Executive Officer  
21 Netco Title, Inc. (FN)  
22  
23 ...  
24 ...  
25 ...  
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